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2133

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#4/8-12-04

Serial Number: 10/083,749

Appn. Filed: 2002 February 25

Applicant: Richard Jaworski

Appn. Title: System of testing the upstream cable modem channel

Examiner/GAU: Kerveros, James C / 2133

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JUL 27 2004

Mailed: 2004 July 20

At: Roswell GA

Technology Center 2100

Request for Reconsideration

Assistant Commissioner for Patents

Washington, District of Columbia 20231

Sir:

Applicant hereby respectfully requests reconsideration of the decision to dismiss the "Petition to Make Special" under M.P.E.P. 708.02(11) for the above application. Included with this request are the references deemed most closely related to the subject matter encompassed by the claims that were noted to be missing from the original petition.

Very Respectfully

Applicant: _____

Attachments: References Supporting Document, European Patent Application EP 1 204 240 A2, US Patent 5,477,531, US Patent 6,424,632

C/O: Richard Jaworski

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Certificate of Mailing

I certify that this correspondence will be deposited with the United States Postal Service as Express Mail with proper postage affixed in an envelope addressed to: Assistant Commissioner for Patents, Washington, DC 20231 on the date below:

Date: 2004 July 20

Applicant



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**References in Support of Accompanying Request For Reconsideration of
Decision to Dismiss Petition to Make Special
Reason II – Infringement Exists**

In support of the accompanying Request for Reconsideration, applicant declares as follows:

1. I am the applicant of the above-identified patent application.
2. I declare that I have made a rigid comparison between prior art and the claims of this application and find that claim(s) from this application compare to referenced prior art as follows:

Method and device for determining the performance of a network - European Application EP 1 204 240 A2 (US Application not yet published)	Comparison to Claims of Above Application Invention claims method of determining performance of the cable modem network by using downstream forward error correction (FEC) to detect errors on the downstream channel to determine if ping packets were lost in the upstream or downstream. This is different to the above application that disables the Cyclic Redundancy Check (CRC) function on the downstream and doesn't discard ping packets returned with errors. Further inspection of the errored ping packet is also claimed in the above application, which is different then relying on the FEC to determine a time frame when errors occur.
Method and apparatus for testing a packet-based network - US Patent 5,477,531	Comparison to Claims of Above Application Invention claims a method of determining the performance of a packet based network by using a burst of packets of various sizes, spacings and sequences to determine the effect the network has on this transmission. This is different to the above application in that this invention makes no attempt to isolate problems to a direction of transmission when a test is looped back or pinged as in the first reference and in the above application. The determination of the direction of impairment either upstream or downstream is key to the above application and this patent does not claim any means to determine direction.
Method and apparatus for testing packet data integrity using data check field - US Patent 6,424,632	Comparison to Claims of Above Application Invention claims a method of determining the performance of a packet based network by appending a Cyclic Redundancy Check (CRC) check field to packets to create an additional check of the packet to see if the packet has been modified or changed by transmission or switching equipment. This is different to the above application in that no appended CRC check is claimed. In the above application the CRC check used in standard IP protocol in the cable modem is disabled and other means are claimed to determine if the packet is indeed a test packet. The referenced invention doesn't claim means for determining the direction of the impairment in a looped back or pinged configuration as is claimed in the above application.



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3. I declare that I have a good knowledge of pertinent prior art in relation to this application and alleged infringement.
4. I further declare that all statement made herein of my own knowledge are true and that all statements made upon information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application and any patent issuing therefrom.

Very respectfully,



Richard Jaworski

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